STATE OF VERMONT

HUMAN SERVICES BOARD

In re	) Fair Hearing No. T-08/09-434
	)
Appeal of	)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Child Development Division Licensing Unit citing her family day care home for a violation of its regulations following an inspection of the petitioner's facility in April 2009.

After several telephone status conferences, a telephone hearing was held on December 4, 2009. The following findings of fact are based on the testimony at that hearing and on the undisputed representations of the parties in the prior status conferences.

FINDINGS OF FACT

1. On April 23, 2009 a Department licensing official visited the petitioner's registered family day care home. While she was there she observed what-she-considered-to-be a discrepancy in the petitioner’s records regarding the number of children the petitioner claimed were receiving full time

care that week, which was a school vacation. The petitioner vouched for the accuracy of her records at that time.

2. There is no dispute that on May 14, 2009 the petitioner submitted an online claim to the Department for a subsidy payment for a child for the school vacation week in April in which the petitioner alleged that child was in her care "full-time". However, when the Department reviewed the child's attendance records, they showed that the child had attended the petitioner's facility on only 2.5 days that week, for a total of 23.25 hours, which would have only allowed for reimbursement at the "part-time" rate, which is lower than the full-time rate.

3. At the hearing the petitioner alleged that she thought she could "round up" any partial hours the child attended her care each day, and that the total "rounded up" hours she submitted for the week were sufficient to meet the definition of "full-time" care for that child for that week. Thus, the petitioner argues that she should not be cited for this "mistake".

4. The parties agree that the definition of "full-time" child care is 25 or more hours per week. To get to this number the petitioner had to "round up" a total of almost two hours of care for the child in question over a period of

three days. The petitioner does not allege that any guidelines or information she received from the Department led her to assume that she could round up hours of care in this manner, or that she had asked anyone's advice in this regard. It strains credulity that the petitioner, or any provider, could reasonably think that padding the number of hours of care in this manner is allowed or condoned under the regulations.

ORDER

The Department's decisions are affirmed.

REASONS

At the outset, it must be noted that this case does not involve a decision by the Department regarding the petitioner's day care registration. It is only whether the incident in question constituted a "violation" of the Department's family day care home regulations. If so, a notice of that violation is listed on the Department's web site for the public's information.

Regulation VI8 of the Department's regulations includes:

> The applicant or registrant shall not . . . provide false information . . . in an investigation or inspection.

As noted above, before the Department later verified the discrepancy in the petitioner's records, the petitioner told the licensor that the child in question had been in her care "full-time" that week. Based on the testimony, it cannot be found that the petitioner's actions were simply a "mistake". Therefore, it cannot be concluded that the Department is acting beyond its discretion to publicize that the petitioner's day care, on at least one occasion, was in violation of the above regulation.

Inasmuch as the Department's decision is supported by the evidence and constitutes a reasonable interpretation of its own regulations, it must be affirmed by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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